

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

RICHARD KOSTENBAUDER,

Petitioner,

VS.

BRIEN COOK, Warden,

Respondent.

CASE NO. 3:12CV2581

JUDGE JOHN R. ADAMS

ORDER AND DECISION

This matter appears before the Court on Petitioner’s Objection to the Magistrate Judge’s Report and Recommendation (“the Report”) filed on January 3, 2014 in response to Petitioner’s Writ of Habeas Corpus.

The Court, in conducting a *de novo* review of Petitioner’s objections pursuant to 28 U.S.C. §636(b)(1), has carefully considered the arguments raised by Petitioner and hereby **OVERRULES** them. The Magistrate Judge’s Report and Recommendation is **ADOPTED** in its entirety and Petitioner’s Writ of Habeas Corpus is **DISMISSED**.

Upon the timely filing of a petitioner's objections to a Magistrate Judge's Report and Recommendation, this Court is required to perform a *de novo* review of "those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. §636 (b)(1).

The Report concludes that Petitioner procedurally defaulted the sole claim in his petition and that he failed to show cause and prejudice to excuse that default. In his objections, Petitioner does not allege legal error in the Report. Instead, he asserts that it is unfair to hold him to the

same standard as other litigants because he has an I.Q. below 70. While Petitioner's I.Q. may make it more difficult for him to navigate through the requirements of the AEDPA, it does not provide him a substantive argument to evade those requirements. Accordingly, his objections are OVERRULED. The Report is ADOPTED in full and the petition is hereby DISMISSED.

The Court certifies, pursuant to 28 U.S.C. §1915(A)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability.

IT IS SO ORDERED.

DATE: March 13, 2014

/s/ John R. Adams
Judge John R. Adams
UNITED STATES DISTRICT COURT